

D.T.E. 01-72

Investigation by the Department of Telecommunications and Energy on its own motion commencing a rulemaking pursuant to 220 C.M.R. § 2.00 et seq., adopting regulations for the operation of motor vehicles for the carriage of passengers for hire under a certificate of public convenience and necessity, charter license, special service or school service permit contained in 220 C.M.R. § 155.00 et seq.

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ORDER INSTITUTING RULEMAKING

## I. INTRODUCTION

By this Order, and pursuant to G.L. c. 161B, § 6(i), the Department of Telecommunications and Energy (“Department”) opens a rulemaking for the purpose of adopting regulations prohibiting ad wraps<sup>1</sup> on bus windows in the Department’s general regulations for “Operation of Motor Vehicles for the Carriage of Passengers for Hire Under a Certificate of Public Convenience and Necessity, Charter License, Special Service or School Service Permit” under 220 C.M.R. § 155.00. The Department is the designated oversight agency for Massachusetts Regional Transit Authorities (“RTAs”) for safety of equipment and operations pursuant to G.L. c. 161B, § 6(i). With the recent events by terrorists, the proposed regulations are necessary for the public safety and general welfare. These regulations are enacted pursuant to G.L. c. 161B, § 6(i) in accordance with the procedures outlined in G.L. c. 30A, § 2 and 220 C.M.R. § 2.00 et seq.

Several RTA’s have utilized full/ad wraps to generate revenue to fund their transit systems. The Department finds that public safety concerns override any advantages to revenue enhancement. The Department now seeks comment on proposed adoption of regulations prohibiting ad wrap on bus windows.

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<sup>1</sup> The advertising configuration called “full/ad wrap” used on certain buses and subway cars covers an entire bus or subway car, other than the windshield and the driver’s side windows, with a special spray that produces an artwork covering the outside of the vehicle.

## II. PROPOSED REGULATIONS

By this Order, the Department proposes regulations prohibiting ad wrap material covering bus windows. The need to ensure public safety necessitates adopting regulations pursuant to the Administrative Procedure Act. G.L. c. 30A, § 2. Before the amended regulation can become permanent, however, further action will be required, including an opportunity for public comment. Id. The Department will provide that opportunity at a public hearing.

The Department continuously reviews and implements policies and procedures designed to protect public safety pursuant to the general supervisory authority delegated to it by the General Court. See e.g., G.L. c. 164, § 76; G.L. c. 161B, §6(i); 220 C.M.R. §§ 69, 101-113. Since the tragic events of September 11, 2001, the Department has thoroughly reviewed existing policies and procedures to determine whether additional measures should be implemented to ensure public safety and general welfare. Upon our review of safety regulations for the operation of motor vehicles that carry passengers for hire under a certificate of public convenience and necessity, the Department determines that full/ad wrap, which prevents the interior of motor vehicles from being viewed from the outside, presents a threat to the safety of operators and passengers aboard vehicles maintained by RTAs. This impediment was apparent, when, on October 12, 2001, twenty-seven passengers on a bus with windows covered by full/ad wrap were robbed by five men armed with guns and knives. Although police officers drove by the bus during the time of the robbery, given the placement of the

full/ad wrap, the officers could not see inside the bus to determine that a robbery was in progress.

The Director of the Department's Transportation Division ("Director") has interpreted G.L. c. 161B, § 6(i) to prohibit ad wrap.<sup>2</sup> The Department seeks to formalize the Director's initiative by instituting this rulemaking and to permit interested parties an opportunity to provide comments. Adopting general regulations applicable to the "Operation of Motor Vehicles for the Carriage of Passengers for Hire Under a Certificate of Public Convenience and Necessity, Charter License, Special Service or School Service Permit" is necessary for the public health, safety or general welfare.

Accordingly, the Department proposes amending regulations 220 C.M.R. § 155.00 et seq. entitled "Operation of Motor Vehicles for the Carriage of Passengers for Hire under a Certificate of Public Convenience and Necessity, Charter License, Special Service or School Service Permit" to prohibit full/ad wrap under 220 C.M.R. § 155.02(34). A copy of the current regulations indicating the proposed revisions is attached. The effective date of the revised regulations shall be the date of final publication in the Massachusetts Register.

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<sup>2</sup> On September 20, 2001, the Director requested each RTA to remove that portion of the ad wrap that covered any part of the windows of the buses under their control.

### III. SOLICITATION OF COMMENTS

The Department seeks initial written comments on these proposed revisions to 220 C.M.R. § 155.00 et seq. no later than 5:00 p.m. on May 10, 2002, and reply comments no later than 5:00 p.m. on May 24, 2002. Written comments shall be limited in length to a maximum of 20 one-sided, double-spaced typewritten pages. Comments should be filed with Mary L. Cottrell, Secretary, Department of Telecommunications and Energy, One South Station, 2<sup>nd</sup> Floor, Boston, Massachusetts 02110. All written pleadings or comments must also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to [dte.efiling@state.ma.us](mailto:dte.efiling@state.ma.us), cc: Hearing Officer at [michael.killion@state.ma.us](mailto:michael.killion@state.ma.us); or (2) on a 3.5" floppy diskette, IBM-compatible format. The text of the e-mail or the diskette label must specify: (1) an easily identifiable case caption; (2) docket number; (3) name of the person or company submitting the filing; and (4) a brief descriptive title of document (e.g., comments). The electronic filing should also include the name, title and phone number of a person to contact in the event of questions about the filing. Text responses should be written in either Word Perfect (naming the document with a ".wpd" suffix) or in Microsoft Word (naming the document with a ".doc" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department's Website (<http://www.mass.gov/dpu>).

To provide further opportunity for comment, and pursuant to G.L. c. 30A, §§ 2 and 4, and 220 C.M.R. § 2.05, the Department will hold a public hearing on May 17, 2002, at

10:00 a.m., at the Department's offices, One South Station, Boston, Massachusetts. Interested persons may present facts, opinions, or arguments relating to the proposed regulations at the public hearing.

By Order of the Department,

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James Connelly, Chairman

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner